STATE OF MICHIGAN

COURT OF APPEALS

JOSEPH SNYDER and SHELLY SNYDER,

Plaintiffs-Appellees,

v

MIDWEST MOBILE HOMES, INC., JERRY CLARK, and SHERRY CLARK,

Defendants,

and

WESTERN SURETY COMPANY,

Appellant.

UNPUBLISHED
February 20, 2007

No. 264898
Genesee Circuit Court
LC No. 01-071319-CP

Before: Cavanagh, P.J., and Murphy and Meter, JJ.

PER CURIAM.

Appellant appeals as by leave granted[1] the trial court's order granting judgment in favor of plaintiffs against appellant. We reverse.

Appellant's first issue on appeal is whether the trial court erred by granting a judgment against appellant when there was no summons or complaint filed against appellant. This issue involves statutory interpretation. Statutory interpretation is a question of law that is considered de novo on appeal. *Eggleston v Bio-Medical Applications of Detroit, Inc,* 468 Mich 29, 32; 658 NW2d 139 (2003). "The rules of statutory construction require the courts to give effect to the Legislature's intent." *Universal Underwriter Ins Group v Auto Club Ins Assoc*, 256 Mich App 541, 544; 666 NW2d 294 (2003).

[1] Appellant's application for leave with this Court was initially denied. Appellant then filed an application for leave in the Supreme Court, and, in lieu of granting leave to appeal, the Supreme Court remanded the case to this Court for consideration as on leave granted. *Snyder v Midwest Mobile Homes, Inc,* 474 Mich 851, 851; 702 NW2d 586 (2005).

The general rule is that no one can be subjected to a judgment without there being a suit against him. In certain cases involving sureties, however, judgment may be entered against a surety who was not a party to the action. The trial court's power to render such a judgment is statutory and cannot be extended by implication. *Willard v Fralick*, 31 Mich 431, 432 (1875). In this case, the trial court made its decision to enter a judgment against the surety on the basis of MCL 600.2655. MCL 600.2655 provides:

> Whenever any person becomes security for costs for another, in any court in this state, whether such security is required by law to be given, or is required by order of the court, in case the opposite party in any such action recovers final judgment for costs against the principal, thereupon judgment or decree may immediately be entered, as well against such surety as against such principal, and execution may issue against such surety, in the same manner as if he had been himself a party to such suit.

The issue here is whether the bond given by appellant rendered it subject to MCL 600.2655 and, therefore, capable of having an immediate judgment entered against it.

The first criterion in determining legislative intent is the specific language of a particular statute. *Halloran v Bhan*, 470 Mich 572, 577; 683 NW2d 129 (2004). The fair and natural import of the terms employed, considering the subject matter of the law, governs. *In re Wirsing*, 456 Mich 467, 474; 573 NW2d 51 (1998). If the statutory language is clear, judicial construction is normally neither necessary nor permitted. *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005).

In this case, the plain and ordinary meaning of the statutory language supports the conclusion that MCL 600.2655 is not applicable to this case, because MCL 600.2655 only applies where a person has become "security for costs for another." Securing the costs of another is not the equivalent of securing the damages of another. In 1875, our Supreme Court refused to apply a prior version of MCL 600.2655 because the bond involved covered damages and costs. *Willard*, *supra* at 432. As stated by our Supreme Court, "[t]he costs are not the principal thing secured, but are merely incidental. The statute allowing the sureties to be included in the judgment does not apply. *Id.*

More recent authority also supports the conclusion that "security of costs" refers to expenses incurred in the context of litigation rather than the initial damages suffered. For example, as described by this Court in *Wells v Dep't of Corrections*, 447 Mich 415, 418-419; 523 NW2d 217 (1994), "[t]he court rules use the word 'costs' to describe two different types of assessment. The costs and fees described in MCR 2.002 are the sums that a party must pay to the court for the opportunity to litigate a dispute. Taxed costs serve a different purpose – reimbursement of the prevailing party." Costs "taxable in any civil action" have been defined as (1) the fees of officers, witnesses, or other persons, (2) fees associated with matters specially made taxable elsewhere in statutes or rules, (3) legal fees for any newspaper publication required by law, (4) the reasonable expense of printing any required brief and appendix in the Supreme Court, (5) the reasonable costs of any bond required by law, including any stay of proceeding or appeal bond, and (6) any attorney fees authorized by statute or by court rule. *Allard v State Farm Ins Co*, 271 Mich App 394, 401; 722 NW2d 268 (2006); MCL 600.2405. Moreover, in discussing MCR 2.109, this Court has described "security of costs" as a "'bond with surety as

required by the court in an amount sufficient to cover all costs and other recoverable expenses that may be awarded by the trial court.'" *Farleigh v Amalgamated Transit Union, Local 1251*, 199 Mich App 631, 633; 502 NW2d 371 (1993), quoting MCR 2.109(A).

Under the terms of the bond in this case, appellant agreed to indemnify or reimburse any purchaser, any seller, or the State of Michigan for any monetary loss after a judgment was entered in a court of record against Midwest on the basis of fraud, cheating, or misrepresentation. Even if the costs of litigation are included among the monetary losses suffered, the bond primarily covers the initial damages incurred. The trial court only applied the bond to damages, while awarding other costs in addition to the bond. However, the fair and natural import of the terms used in MCL 600.2655, as well as the analogous authorities cited above, compel the conclusion that the statute covers bonds securing the costs of litigation and not damages suffered before litigation. The trial court erred in applying MCL 600.2655 to this case.[2]

Reversed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Patrick M. Meter

[2] Given our resolution of appellant's first issue, there is no need for us to address appellant's other issues on appeal.